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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/010,869	12/07/2001	Richard Warren Tanzer	12870.1	6318

22827 7590 07/28/2004

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/010,869

Applicant(s)

TANZER ET AL.

Examiner

Jacqueline F Stephens

Art Unit

3761

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 4,13,22 and 26 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3,5-12,14-21 and 23-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/7/02</u> . | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Specification*

- a. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

(a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.

(b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.

(c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

The specification is objected to under 37 CFR 1.71 because the specification fails to adequately teach how to make and/or use the invention.

1. The disclosure gives a wide range of fibers and various structures, i.e. single and multiple layers as being suitable for providing the claimed performance characteristics. Additionally, specific test results are cited. While specific materials and structure are given in the examples, the disclosure is not enabled for the wide variety of fibers listed as being suitable for the article, pages 35-36. Without this disclosure, one of ordinary skill cannot practice the invention without undue experimentation.

***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-3, 5-12, 14-21, and 23-25 are rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for the specific materials given in the examples, does not reasonably provide enablement for the list of materials for the first wicking layer on pages 35-36, which are indicated as capable of providing the claimed test results. The specification does not enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make the invention commensurate in scope with these claims. Additionally, the disclosure teaches a broad range of fibers and materials suitable for a second retention layer, but fails to teach one of ordinary skill in the art the exact fiber needed or the exact method of forming the structure to provide the claimed test results. Without this disclosure, one of ordinary skill cannot practice the invention without undue experimentation because of the number of operational parameters in the process and uncertainty as to the mechanism for forming the outer cover.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

6. Claims 1-3, 5-12, 14-21, and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutkiewicz et al. USPN 5843852 in view of Bastioli et al. USPN 5286770.

As to claims 1, 5, 6-10, 14-19, and 23, Dutkiewicz discloses the present invention substantially as claimed. Dutkiewicz discloses a transport layer having the claimed properties, see col. 6, line 42 through col. 7, line 52. However, Dutkiewicz does not disclose a second retention layer comprising a hydrogel-forming polymeric material. Bastioli discloses a retention layer having hydrogel-forming polymeric material (col. 10, lines 8-11). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the article of Dutkiewicz to have a retention layer comprising hydrogel-forming polymeric material for the benefit of increasing moisture absorption in a relatively thin pad.

Dutkiewicz/Bastilio do not disclose the claimed absorbent capacity.

Dutkiewicz/Bastilio recognizes the size and absorbent capacity of the absorbent core may vary to accommodate wearers of different sizes (Bastilio col. 9, line 64 through col. 10, line 6). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the article of Dutkiewicz/Bastilio with the claimed absorbent capacity, since discovering an optimum value of a result effective variable involves only routine skill in the art.

Dutkiewicz/Bastilio disclose a bonding agent capable of bonding the first layer and second layer (Bastilio col. 9, lines 20-25).

As to claims 2, 11, 20, 24 Dutkiewicz/Bastilio discloses a dry tensile and a wet tensile strength (Dutkiewicz col. 8, lines 26-46). However, Dutkiewicz/Bastilio does not disclose a dry or wet geometric mean breaking length. The liquid transport structure of Dutkiewicz/Bastilio has the same properties (vertical flux) and is used in the same environment as applicant's wicking layer. Therefore, the general conditions of the claimed invention are present in the prior art. Even though Dutkiewicz/Bastilio does not disclose the specific geometric mean breaking length, applicant has not disclosed the claimed geometric mean breaking length value is critical. The claims are structural claims and liquid transport structure, results in a structure that is capable of transporting fluids at a high rate. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the structure of Dutkiewicz/Bastilio with the claimed geometric mean breaking length of the present

invention, since where the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation, In re Aller et al. 105 USPQ 233.

7. Claims 3, 12, 21, 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dutkiewicz/Bastilio as applied to claims 1, 10, 19, and 24 above, and further in view of Noda USPN 5685756.


Dutkiewicz/Bastilio discloses the present invention substantially as claimed. However, Dutkiewicz/Bastilio do not disclose the binding agent is polyhydroxyalkanoate. Noda discloses the use of polyhydroxyalkanoate as a binding agent in a disposable article for the benefit of providing a compostable product (col. 2, lines 1-8). It would have been obvious to one having ordinary skill in the art at the time of the invention to modify the invention of Dutkiewicz/Bastilio to comprise polyhydroxyalkanoate for the benefits disclosed in Noda.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Jacqueline F Stephens  
Examiner  
Art Unit 3761



July 26, 2004